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90-3 13

FILED

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JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

RE:

EARLENE POLYAK

— Petitioner

v

FRANK HULEN AND
WILMA LESNANSKY

Respondent

WILLIAM BOSTON AND
BOSTON BATES & HOLT

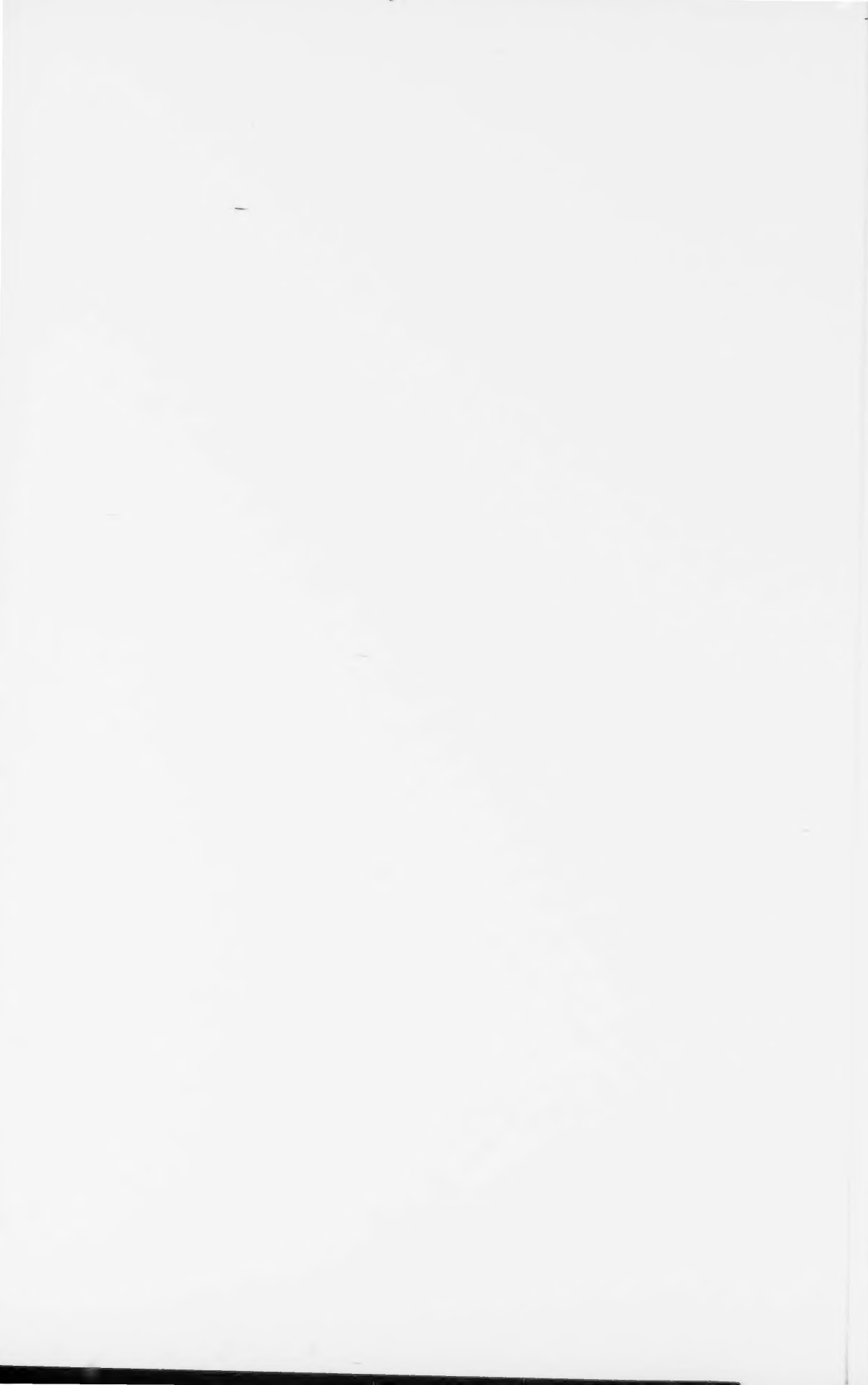
Respondent

THOMAS STACK AND
HENRY HENRY & STACK

Respondent

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES DISTRICT COURT
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
4063 Hood Road
Palm beach Gardens
Florida 33410
(407) 627-3564
-or-
3179 Middlefield Dr
Trenton, Michigan
(313) 676-3364



QUESTIONS PRESENTED

1. Is injunction issued against the filing of any further complaints regarding properties in Lawrence County, by the United States District Court, Columbia Division, Middle District of Tennessee, in violation of property owner's basic constitutional right and interest to possess, use, and dispose of property, and in violation of federal protection of equal protection in the due process clauses of the Fifth and Fourteenth Amendments?

2. Is Tennessee law (21-1-203) dispersing with personal service of notification on non-resident property when non-resident bonded for appeal constitutional?

3. Does permitting remand of case to state allow manipulative dismissals and deny defendant protection of removal statute?

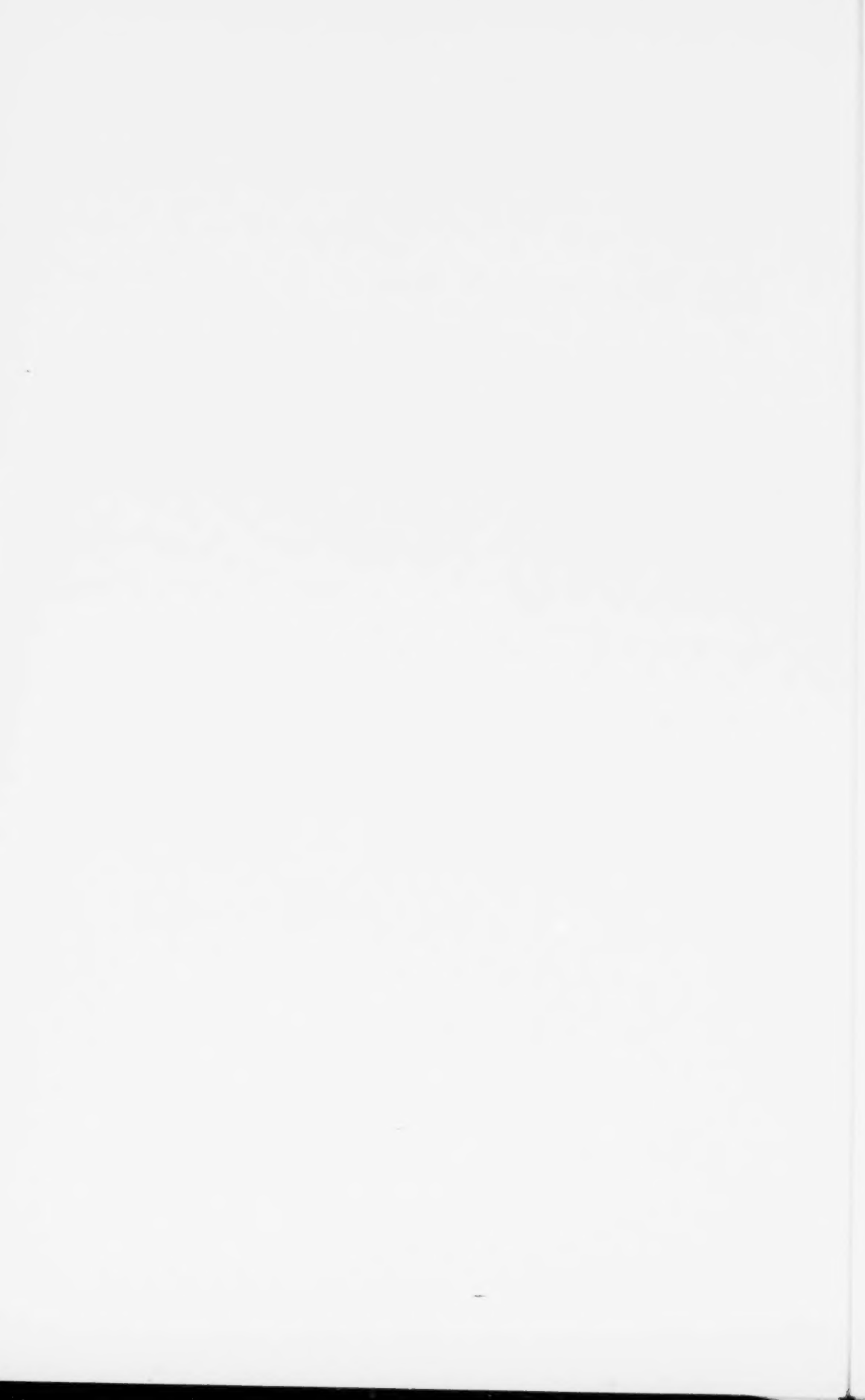
4. Is the sale of possessory right and interest at Public (private) Auction constitutional?

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RE:

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THOMAS STACK AND
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Respondent

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES DISTRICT COURT
FOR THE SIXTH CIRCUIT

Petitioner prays that a Writ of Certiorari
issue from this Supreme Court to review the
above captioned cases pursuant to 28 U.S.C.
§2101.

Companion cases: Frank Hulen and Wilma
Lesnansky v Earlene Polyak 89-5648(D.C. 1-84-
0082(1-89-X-06(Counter-claim) cons. Earlene
Polyak v Frank Hulen and Wilma Lesnansky 89-
5650(D.C. 1:84-0083(1-89-X-05); Buford Evans &
Sons v Earlene Polyak 89-5320(D.C. 1:85-0120
Counter-claim (1-89-X-01); Earlene Polyak v
Wilma Lesnansky and Frank Hulen 89-5496;
Earlene Polyak v Jim Hamilton et al. 89-5649
(D.C. 1:85-0116(1-89-X-04). And Earlene Polyak
v Jim Hamilton, Judge , Chancery 1974, and Cir-
cuit No. 10647 from Supreme Court of Tennessee
filed Supreme Court No. 90-86, July 11, 1990.

The Court of Appeals for the Sixth Circuit has affirmed the dismissal of all complaints for relief in jury trial for damages on New Evidence of the seizure sale and transfer of Appellant's constitutionally possessed right and interest to use and dispose in the Affidavit filed on June 21, 1988 in the District Court. Property was sold during appeal.

The Court of Appeals affirms all dismissals of unconstitutional seizure without oral Argument before the Court in docket control. Five appeals were submitted to same judges.

This appeal is the last of the series all denied filing by the Honorable Thomas Higgins District General Docket No. 1-89-X-12 Frank Hulen and Wilma Lesnansky (Counter-claim; 1-89-X-01 Buford Evans & Sons v Earlene Polyak; 3-89-X-16 Earlene Polyak v Wilma Lesnansky and Frank Hulen; 1-89-X-06 Frank Hulen and Wilma Lesnansky v Earlene Polyak; 1-89-X-05 Earlene Polyak v Frank Hulen and Wilma Lesnansky, and 1-89-X-04 Earlene Polyak v Jim Hamilton et al.

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OPINIONS BELOW

The opinions of the Court of Appeals are set forth in Appendix A. The opinions from the United Sistrict Court, Columbia Division, Middle District of Tennessee are set forth in Appendix B. and pertinent opinions from the lower Courts are set forth in appendix C.

JURISDICTION

The Petition for Rehearing in Frank Hulen and Wilma Lesnansky v Earlene Polyak Counter-claim in Complaint and Demand for Jury Trial was denied on May 21, 1990, and this petition for Writ of Certiorari is timely within ninety (90) days thereof.

The jurisdiction of this Supreme Court is invoked in the Constitution Article III, Sec.2, in which the judicial power of the United States extends to all cases of law and equity, between state and citizens of antoher state; and citizens of different states.

The jurisdiction is inviked in 42 U.S.C. 1983, 1982 and 1981; 28 U.S.C. 1443, andd 2101 and the Fifth Seventh and Fourteenth Amendmendt

The federal and constitutional questions have been consistently raised in these cases.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides:

No...person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. Amend V.

The pertinent portion of the Seventh Amendment provides:

...where the value of controversy shall exceed twenty dollars, the right of a jury trial shall be preserved.

U.S. Const. VII.

The pertinent portion of the Eighth Amendment provides:

...nor excessive imposed, nor cruel and unusual punishment inflicted.

U.S. Const. VIII.

The pertinent portion of the Fourteenth Amendment provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property,

without due process of law; nor deny any person the full and equal protection of the laws.

U.S. Const. XIV.

28 U.S.C. 1443 provides:

(1) Against any person who is denied or cannot enforce in the Courts of such state a law providing equal civil rights of citizens of the United States or of persons within its jurisdiction.

(2) For any act under the color of authority deprived from a law providing for equal rights.

42 U.S.C. provides:

1981, All persons within the jurisdiction of the United States shall have the same right in every state to enforce contracts to sue,...to the full and equal benefit of all laws.

1982, ...to inherit hold, lease purchase lease and convey real and personal property.

1983. Every person...who under the color of any ...custom or usage of any state ...subject or cause to be subjected any citizen of the United States or other person within its jurisdiction ...deprivation of rights and priveleges...secured by the constitution and its laws, shall be liable to the party injured in action at law in equity proceedings...

TENNESSEE PARTITION IN KIND 29-27-117 provides

If exact partition of property cannot be made without material injury to the parties, or some one of them, the commissioners may make the partitions as nearly

equal as they can, and charge the larger shares the sums necessary to equalize all shares. Tennessee Code Annotated 1932.

United States Department of Agriculture
issued in bulletin on November 1, 1984.

.....
No. 7. If marketing card is used to market tobacco(burley) on another farm, or if tobacco is produced on farm is identified on marketcard of another farm, the person enrolled may be subjected under Title 18 Sec. 1001 U.S. Criminal Code, which provides for fine, and not more than five years or both, and the quotas of both farms may be reduced.

28 U.S.C. 2403:

In any action...where the constitutionality of a statute of that state affecting public interest is drawn into question.

STATEMENT OF THE CASE

This petition is to the Supreme Court to pass on the specific issue of whether the loss of possessory interest and right, use, and to dispose of property, including United States Department of Agriculture Burley Tobacco Allotment constitutes a per se "physical taking" in the denial of due process and the deprivation

of civil and constitutional laws and property rights as provided in the Fifth, Seventh, and Fourteenth Amendments.

The first impression of the constitutionality of loss of owner's right to possession use and dispose has not been considered by this Supreme Court.

"Although the Supreme Court has not passed on the specific issue of whether the loss of possessory interests, including the right to exclude..."Seawall Ass. v City of New York 522 N.Y.S. 2d 542 (1989).

On November 27, 1989, the Supreme Court allowed New York Court Appeals ruling that New York City's SRO housing unconstitutionally confiscates property, and has the effect of seizure of property without just compensation 89-388.

The Petitioner's properties were seized sold and transferred, including burley tobacco allotment, without any compensation, or notification of time , place of sale, and without

entering the order of sale for Right of Redemption and Right of Appeal pursuant to Rule 3 Tennessee Rules of Civil Procedure, "interfere with... the use ...of the property...as to constitute "taking", Nolan v Calcostao Comn., 483 U.S. 825 836 17 S Ct 3141 97 L Ed 677(1977).

In addition to review of the denial in DOCKET CONTROL in the Court of Appeals of the dismissal by the District Court and complaint for relief in demand for JURY TRIAL on NEW EVIDENCE of "unconstitutional"taking"of properties in this case 89-6271, Petitioner seeks review of recent denials in DOCKET CONTROL, and companion cases for relief in JURY TRIAL.

This appeal 89-6271 denied filing complaint and demand for jury trial for "unconstitutional seizure of properties on NEW EVIDENCE DC.1:87-0075 FRank Hulen and wilma Lesnansky v Earlene Polyak (counter-claim) included D.C.1:84-0082 Frank Hulen and Wilma Lesnansky v Earlene Polyak (counter-claim) and 1.84-0083 Earlene Polyak v Frank Hulen and Wilma Lesnansky.

Robert Boston's father William Boston
Boston Bates & Holt submitted order to sell
Petitioner's property after an unjust and
unfair hearing on July 29, 1983 before the
Honorable Jim Hamilton after holding order
without entering on over three months on
October 19, 1983, and no compensation (App. p 35).

William Boston Boston Bates & Holt represented the family since January 1976, in settlement by agreement to PARTITION IN KIND 29-27-117 Tennessee Rules Code Annotated. But attorney divided loyalties and sued for sale that property could not be divided in violation of Statute Partition in Kind.

On January 19, 1983, Boston Bates & Holt prepared UNAPPEALABLE JUDGMENT SIGNED BY Mr. Holt and Judge Hamilton (App. C.p 29).

This petition seeks review of appeals to negligence Earlene Polyak v William Boston Boston Bates & Holt 90-5015 (D.C. 1:86-0036) and 89-6414, 89-8510, 90-8508 arising from 1:86 0036.

Petitioner learned that her properties, including a travel trailer from her yard was advertised for the sale of her "interest therein" sometime between September, and November 1987 in the local Advocate, through casual conversation in Lawrenceburg, Tennessee on April 1, 1988, and the party makes Affidavit of reading notice of sale(App. B p. 29).

Robert Boston, son of William Boston Boston Bates & Holt, submitted his order to sell property for Petitioner's "interest therein" without any compensation, to the Honorable Jim Hamilton in Chancery 1974, to be signed by Jim Hamilton Circuit Judge in September 1987, with copy to Petitioner dated August 21, 1987 (App.C p.30).

Petitioner submitted Complaint and Counter-claim and demand for Jury trial, and removal 28 U.S.C. 1443 to District Court with in four days on August 24, 1987, but complaint held over thirty(30) days filed and dismissed on September 29, 1987. Denied records(App. Ap 2).

Case 89-6414 (1:86-0036) is appeal to dismissal of Motion to Rescue for conflict of interest pursuant to 28 U.S.C. 144, Motion for Continuance due to the burden Petitioner's appearance at second pretrial conference on her health, and Motion to Transfer Case to United States District Court Florida so she could care of health and case, to the Honorable Thomas A. Higgins on September 15, 1998.

Case 90-9015 arises from Petitioner's Motion for Findings of facts in motion to transfer case denied by Judge Higgins, But Court of Appeals demanded \$105.00, after District Court entered as amended notice of appeal Rule 10(e) Appellate Procedure.

Case 90-8508 is denial of Court of Appeals to Five Part Extraordinary Writ to Leonard Green Clerk et al. Part I Show cause that District Clerk held Notice of Appeal to Findings of fact past December 11, 1989 in 90-9015.

Part II regards failure of Clerks to receive timely Petitions for Rehearings 89-5320

(1:85-0120 Earlene Polyak v Buford Evans & Sons for illegal entry upon property and conducting invalid survey, and "wrongful lawsuit"; NO. 89-5496 Earlene Polyak v Wilma Lesnansky and Frank Hulen in damages and loss of investment of (13) thirteen years, interest, loss of right and interest in retirement home, and sale and transfer of U.S. Statement Burley Tobacco allotment without rent and signature against Title 18 Sec. 1001 U.S. Criminal Code: 89-5649 (D.C. 1:85-0116 Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence county for denial notice of Appeal Rule 3 TRAP.

Part III review of Ms. Janice Yates taking writ of Mandamus apart filed against Judge Judge Higgins. She is Chief Deputy Clerk.

All of the above cases including 89-5648 (1:84-0082 and 89-5650 (1:84-0083) Cons. by Court of Appeals (five (5) cases) were submitted to the same Judges MARTIN NORRIS and CONTIE. Ms. Yates explained that they are familiar with this pro se litigant cases.

Petitioner paid Thomas Stack Henry Henry & Stack Fifteen hundred(\$1500.00) to defend right and interest in property in jury trial, but unfair and unjust hearing conducted in Maury, County other than Lawrence where complaint filed. Thomas stack did not enter bills for restoration of retirement home on Petitioner agreed partition in property, evaluation of property by Buford Evans, memorandum brief, or arrange for transcript of proceeding.

On May 31, 1988, Judge Higgins issued verdict without Defendants taking witness stand or allowing case to go to the jury.

On June 22, 1988, nine(9) days after directed verdict in favor of defendants, Judge Higgins filed Affidavit of party reading this notice of sale of property.(90-5310)

Judge Higgins disregards, denies, and dismisses all complaints, motions and petition filed by pro se litigant. And Judge has dismissed all complaints for relief on NEW EVIDENCE OF UNCONSTITUTIONAL SEIZURE OF PROPERTY.

1. THE COURT OF APPEALS DISREGARDS CONFLICT OF
OF INTEREST AND FAILURE TO RESCUE IN AFFIRM-
ING DISMISSAL PURSUANT TO 28 U.S.C. 144.

The Court continues to disregard Petitioner's Motion to Rescue for conflict of interest in bias to residents in the denial of due process and deprivation of civil and constitutional laws and property rights of pro se litigant pursuant to 28 U.S.C. 144 to Judge Higgins.

The Honorable Thomas A. Higgins denied Petitioner's motion to rescue from all of her cases since September 18, 1986, up to and including case 89-6414 Earlene Polyak v William Boston and Boston Bates & Holt denied on September 15, 1989.(1:86-0036).

On September 24, 1986, Judge Higgins denied motion to rescue in this case 89-6271(1:87-0075 (1:84-0082 & 1:84-0083) Frank Hulen and wilma Lesnansky v Earlene Polyak(Counter-claim in removal from Chancery Court of Lawrence County) on September 24, 1987.After court held Complaint and demand for jury trial from August 24, 1987, over thirty (30) days before filing and remand

on September 29, 1987 to Chancery Court 1974.

On May 31, 1988. Judge Higgins again started hearing with motion for reconsideration of denial of motion to rescue pending in 1:85-0125 Earlene polyak v Thomas Stack, Henry Henry & Stack.

When Judge Higgins asked Thomas Stack and Bruce Peden to stand and introduced them as attorneys to the jury, Petitioner again objected to Judge Higgins bias to lawyers and verbally asked him to disqualify. Judge denied motion. Later Petitioner overheard Judge Higgin state to lawyer asking for advice" I am a lawyer, I think in terms of One third.""

On August 3, 1989, petitioner submitted a nother motion to rescue from all of her cases to Judge Higgins, but this motion to rescue was denied on September 15, 1989. This order states that reasons are in transcript, which the Court of Appeals has ordered in 89-6414.

Petitioner was denied objections to invalid Transcript of Proceedings in 1:85-0125,

and 1:86-0036. Rule 28 U.S.C. 144:

Whenever a party at any proceeding in a district court makes and files a timely affidavit that a judge before whom a matter is pending has a personal bias against him or in favor of a party, Judge shall proceed no further but another Judge shall be assigned to hear proceeding.

2. COURT OF APPEALS AND DISTRICT COURT DENIAL OF FEDERAL PROTECTION OF EQUAL PROTECTION PURSUANT TO THE FIFTH SEVENTH AND FOURTEENTH AMENDMENTS AND STATE STATUTE 29-27-117.

The Court of appeals affirms the dismissal complaints without federal protection of equal protection of due process of notification in the deprivation of constitutional right and interest, use, and to dispose of properties.

Petitioner's properties have been sold and transferred without any compensation, without notification of time of sale, place of sale, amount of proceeds, where proceeds kept, and without entering order for right of redemption, and Right of Appeal Rule 3 TRAP.

...interferes with...use of property...
as to constitute taking Nolan v California
Costal Comn, 483 825 836 17 S Ct 3141 3147
97 L Ed 677(1977).

Petitioner contends that Tennessee laws(21-1-103 and (21-1-104(a)(e) conflict with the protection Partition in Kind 29-27-119 , and the federal protection of equal protection in the Fourteenth Amendments.

In Tennessee law, Chancery Court, personal service is dispensed with and service made by publication in the following cases:(6) when attachment will lie against defendant's property (21-1-203)Publication must be in newspaper designated by the Court for four consecutive weeks(21-1-204(a)(e).Property bonded for appeal.

The party makes affidavit to reading notice of sale for only one week.(Sale invalid).

Tennessee law provides that"No property levied upon, except perishable, will be sold before final judgment(29-6-104).

The Statute Partition in Kind makes provision for equal division of property, but does not mention division for sale.

The seizure and sale of U.S. Department of agriculture Burley Tobacco Allotment without

Petitioner's signature and paying rent is in violation of Title 18 Section 1001 U.S. criminal code in the "taking of properties.

...this Court recognized that prior to an action which will affect an interest in life, liberty, or property protected by the due process clause of the Fourteenth amendment, a state must provide Notice reasonably calculated under all circumstances, to appraise the interested of the pendency of action and afford them an opportunity to present their objection Invoking this elementary and fundamental requirement of due process. Mulane v Central Hanover Bank & Trust, 339 US 306 314 70 S Ct 652 657 94 L Ed 865 (1950).

Petitioner's property was seized and sold while she was in the Cardiac Unit of Hospital and during recovery without notification, or compensation, without jury trial and without appeal ever being heard in any Court.

3. COURT OF APPEALS DENIED MOTION TO STAY MANDATE, BUT THIS COURT HAS POWER TO AND SET ASIDE FINAL ORDER PURSUANT TO RULE 60.02(b) FRCP.

Petitioner's properties were seized sold and transferred while 1:87-0075 on appeal to the Court of Appeals, and then denied hearing in this Court with final order. Rule 60.02(b)

states final order may be set aside for Fraud whether intrinsic or extrinsic, and misrepresentations by adverse person, and that Court may by its own motion set aside order. This action was filed within one year of final order 1:87-0075, from Supreme Court January, 1990.

...but Supreme Court may review actions of Circuit Court of Appeals directing remand to a state court, and Supreme Court's jurisdiction is not defeated because mandate of Circuit Court of Appeals has issued Aetna Cas. & Sur Co. v Flower Tenn. 1947 67 789 330 US 464 91 L Ed 1024

The Court of appeals has denied stay of mandate in all above named appeals and petition for writ of certiorari with return of mandate to District Court to defeat jurisdiction.

And some cases imply that permitting remand of pendent state claims denies defendant protection of the removal statute and encourages manipulative dismissals. In Re. Greyhound Lines Inc. v Detroit, 598 F 2d 884.

The Court of Appeals continues to affirm all dismissals of all cases on old injunction issued by the Honorable Thomas Wiseman in bias for residents "taking" Petitioner's properties.

on November 13, 1985. In letter to Clerk of Court of appeals on April 30, 1986, Judge Wiseman states, "That order was entered because of previous filings of Mrs. Polyak against various persons in this Court...she should be severely sanctioned therefore."

The Court of Appeals confirms dismissal of all appeals in accordance with old order "enjoining Polyak from filing further litigation " (See order App. A p.

The Court of appeals further covers manipulative dismissal of this complaint to reinstate 1:87-0075(1:84-0082 & 1:84-0083) for relief in jury trial for unconstitutional seizure sale and transfer of properties in affirming denial of Writ of Habeas corpus to bring order for sale without entering for right of redemption and right of Appeal being held in-state court....the traditional function of the writ is to secure release from illegal custody. Frasier v Rodriguez. 411 US 475 484(1973).

The Court of Appeals continues to affirm the "unconstitutional seizure sale and transfer of Petitioner's properties without any notification to her while she was acutely ill in November, 1987. The Court of appeals disregards the fact that Affidavit of party reading notice of sale was filed in the District Court after the dismissal of all complaints on this NEW EVIDENCE on June 22, 1988.

This NEW EVIDENCE was filed nineteen(19) days after Judge Higgins issued directed verdict without allowing Defendants to take stand and without allowing partial trial to go to the jury in 1:85-0125 Earlene Polyak v Thomas Stack and Henry Henry & Stack.

The motion to reinstate this case on New Evidence of sale for relief in negligence for damages in jury trial was denied filing on January 18, and 19, 1990. This motion to reinstate was submitted within ten days of final order from the Supreme Court on January 8, 1990 89-5717/5101/5147(89-365).

The District Court uses old injunction to again deny filing complaint and demand for jury trial for relief on unjust and unfair trial, in denial of due process of jury trial, witness Wilma Lesnansky was untruthful, transcript of the proceedings invalid, and hearing conducted while reconsideration of motion to rescue pending and with verbal motion to Disqualify Judge Higgins.

Petitioner's attempt to appeal case to the Supreme Court was submitted by the Clerk to Court of Appeals, and motion to withdraw was misstated by Clerk in 90-5310. The Clerk at the Supreme Court has denied motion to compel to take appeal to injunction before this Court, in denial of due process and deprivation of civil and constitutional laws and property right to reinstate case 1:85-0125 on unjust and unfair partial hearing and NEW EVIDENCE OF SALE.

4THE COURT OF APPEALS AFFIRMS DISMISSALS IN UNCONSTITUTIONAL DENIAL OF POSSESSION USE AND DISPOSE IN DISREGARD OF RULE 26 FRcivp

This case is covered with Rule 26

Exceptions to Resjudicata and Collateral Estoppel for the denial of due process and deprivation of civil and constitutional laws and property rights under the following circumstances:

(d) The judgment in the first action was plainly inconsistent with a fair and equitable implementation of a statutory or constitutional scheme.

(e) For reasons of substantive policy in case involving a CONTINUE AND REOCCURRING WRONG, the plaintiff is given the option to sue from time

CONCLUSION

Petitioner prays that a writ of certiorari issue to review and of the above cases for relief in jury trial for damages in the irreparable loss of constitutional right and interest in possession, use and to dispose of properties and the loss of there named constitutional rights and interest to never be regained in her retirement home.

Petitioner seeks relief in damages as set forth in all of the above cases.

Respectfully submitted,

Earlene Polyak
4063 Hood road
Palm Beach gardens
Florida 33410
(407) 627-3564

-tentatively from
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 627-3564

Certificate of Service

I certify that a true copy of this
pleading has been mailed to robert Boston,
2100 One Commerce Place, Nashville, Tennessee
37239, and Samuel Warner 119 South First St,
Pulaski, Tennessee 38478.

Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

NOTARY PUBLIC

My Com'n expires: _____

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit.

Frank Hulen and Wilma Lesnansky v Earlene Polyak(Counter-Claim and Demand for Jury Trial No.89-6271(D.C. 1:87-0075(1;84-0082 Frank Hulen and Wilma Lesnansky v Earlene Polyak(counter-claim(D.C. Clerks give same title to all cases) and 1:84-0083 Earlene Polyak v Frank Hulen and Wilma Lesnansky.

Denied in Docket Control: March21,1990.

Peition for Rehearing denied on May 21, 1990. Before: KENNEDY NORRIS & COHN.

Motion to to have the Court transmit the entire Record Denied January 16,1990.

Earlene Polyak v William Boston , and Boston Bates & Holt No.90-5015. Before:MILBURN NELSON AND LIVELY: 90-8508 GUY BOGGS & COHN

Before:

Earlene Polyak v Thomas Stack and Henry Henry & Stack: 89- Denied.

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No. 89-6271

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

(RE:EARLENE POLYAK) FILED JAN 16 1990

FRANK HULEN AND WILMA LESNANSKY

Plaintiff-Appellees

v

EARLENE POLYAK(Counter-claim)

Upon consideration of the appellant's
motion to have the court transmit the entire
record,

It is ORDERED that the motion be and is
hereby denied

Signed Leonard Green

REEARLENE POLYAK

EARLENE POLYAK

FILED MAY 21 1990

Plaintiff-Appellant

v

FRANK HULEN AND WILMA LESNANSKY

Defendants-Appellees

BEFORE: KENNEDY and NORRIS, Circuit Judges and
COHN, United States District Judge.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges , and no judge having requested a vote on the suggestion for rehearing en banc, the petition has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearingthat the issues raised were fully considered. Accordingly, the petition is denied.

ENTERED BY ORDDER OF THE COURT

Signed Leonard Green

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

FILED MAR 21 1990

v

FRANK HULEN AND
WILMA LESNANAKY

Defendant-Appellees

NOT RECOMMENDED FOR
FULL TEXT PUBLICATION

BEFORE: KENNEDY AND NORRIS, Circuit Judges, and
COHN District Judge

This case referred to a panel of the court pursuant to Rule 9(a) Rules of the Sixth Circuit. Upon examination of the briefs and record this panel unanimously agrees that oral argument is not needed. Fed. R. App. 34(a).

Earlene Polyak a pro se florida resident appeals from the district court's orders directing the Clerk not to file a complaint which she had submitted and also denying Polyak's motion for writ of habeas corpus.

Polyak's complaint and habeas petition are further attempts to challenge the results of a Tennessee state court action which resulted in the partition sale of land which she

had inherited as tenants in common.

In her complaint, Polyak seeks to reopen via Fed. R. Civ. p. 60(sic Rule 60.02) and earlier action against appellees, which was subject of a remand order by the district court in September 1987 due to lack of removal jurisdiction. See 28 U.S.C. 1446 1447. Polyak now asserts that she has a newly acquired evidence which mandates reopening the case. Further, she claims the sale of land without her consent constitutes a denial of due process.

In addition, Polyak also seeks to reopen case vi a motion fo writ of habeas corpus. Polyak contends that the sale of her property is unconstitutional and that the Chancery Court of Lawrence County(Tennessee) is holding the order of sale in order to prevent her from entering appeal or seeking redemption .

In accordance with its earlier order enjoining Polyak from further litigation regarding the state court action without the e-press permission of the court, the district court

reviewed Polyak's complaint and denied permission to file it. the district court also reviewed and denied Polayk's habeas corpus petition. Polyak has filed timely notices of appeal, challenging the district court's action.

Upon review we affirm the district Court's actions because both the complaint and habeas petition present entirely frivolous issues.

First, this court has already approved the district court's practice of requiring a plaintiff to submit a complaint for review before it can be filed. SEE Filipas v Lemons 835 F 2d 1145, 1146(6th Cir. 1987).

SEcond, Polyak cannot reinvest the district Court with jurisdiction over a case pursuant to Rule 60 (b) (sic. Rule 60.02(c) FRcivP which was remanded to the state Court more than two years pursaunt to 28 U.S.C. 1446,1447(sic within one year from Supreme Court of the United States final order).See Seedmand v United STates District court for Central Dist.

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of California 837 F 2d 413 414(9th Cir 1988(per curiam) a district court has no power to correct or vacate a remend. Federal Deposit V Santiago Plaza, 598 F 2d 634 636 (1st Cir. 1979)(per curium) Once a district court has decided to remand a case pursuant to 28 USC 1447(c)(d) and as so notified the court, the district Judge is without power to take any further action.

Third, Polyak cannot utilize her complaint to institute a new action pursuant to Rule 60(sic Rule 60.02(b)FRcivP.which does not contemplate the filing of an entirely new cause of action rather than setting aside a final judgment or order for one of enumerated reasons. See Fed. Rule 60(sic Fed Rule 60.02 FRcivP. Moreover, after reviewing Polyak's assertions of "newly discovered evidence", we conclude that, since her claim is reiteration of previous events, we conclude that it is insufficient to reopen case. See McKnight v United States Steel Corp. 726 F. 2d 333,336 . (7th Cir.1984: Mastini v American Tel. Co.

369 US 933(1967).

Finally, Polyak's reliance on a writ of habeas corpus to obtain the order of sale from the Chancery Court is misplaced. The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and the traditional function of the writ is to secure release from illegal custody. Preiser v Rodriquez, 411 US 475, 484,(1973); Ward v Knoblock, 738 F 2d 134 138(6th Cir. 1984) 469 US 119(1985).

Accordingly, the district court's judgment is hereby affirmed pursuant to Rule 9(b)(5) Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green

No. - 9 -
90-5015
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RE: EARLENE POLYAK

Plaintiff-Appellant FILED JUN 22 1990

v

WILLIAM BOSTON AND
BOSTON BATES & HOLT NOT RECOMMENDED FOR FULL
TEXT PUBLICATION

BEFORE: MILBURN AND NELSON, Circuit Judges
and LIVELY Senior Judge.

The court entered an order on January 30, 1990 , directing the appellant to show cause within 21 days why the appeal should not be dismissed for lack of jurisdiction because of late notice of appeal. Appellant has failed to respond to this order, but has filed a motion for the court to return excess charges.

It appears from the record that decision was entered on September 18, 1989. Polyak filed a motion for rehearing on September 25, 1985, which tolled the appeal period. The rehearing was denied October 3, 1989. On October 13, 1989 Polyak filed a district court verification of the October 3, 1989 order which the district court construed as a Fed.R

10(e) motion to correct or modify the record denied on November 9, 1989. On November 1, 1989, Polyak filed a notice of appeal from September 18 judgment and October 3 denial of rehearing. That appeal No. 89-6414, remains pending. The present notice of appeal filed on November 15, 1989, is evidently an attempt to appeal both September 18 and the November 9 order. The former is already before this court on appeal. The time to appeal the latter expired on December 11, 1989, five days before the notice was filed FED. R.P 4(a) and 26(a).

The failure to timely file a notice of appeal deprives an appellate court of jurisdiction. compliance with Fed R. App. 4(a) is a mandatory and jurisdictional prerequisite Denley v Shearson/American Express Inc., 733 F 2d 39 41(6th cir. 1984). Peake v First Nat'l Bank and Trust Co. 717 F 2d 1016 1018(6th cir 1983). Fed R.APP. 26(b). this appeal is dismissed for lack of jurisdiction Rule 9(b)(1).

Signed Leonard Green Clerk.

UNITED STATES COURT OF APPEALS

RE: EARLENE POLYAK

FILED MAR 19 1990

BEFORE: GUY and BOGGS, Circuit Judges, and
COHN, District Judge.

This petitioner, a pro se litigant(sic emphasis ed in order) who has pursued several appeals and original actions in regard to her legal challenges to a Tennessee state court judgment(sic order), has submitted a Five-Part Extraordinary Writ" h: rin she challenges the Clerk's Office has improperly handled five appeals and one mandamus action. She asserts the Clerk's office erroneously rejected motions for rerearing in cases No. 89-5320/5496/5649 as untimely filed, improperly ruled she must file separate docket fees in Cases Nos. 89-6414 and 90-5015, and failed to transmit to the Court all papers submitted by her in Case No. 89-6514 For relief, she seeks an order(1) preventing dismissal of her appeals in Nos. 89-8164 and 90 5015 and the impostition of a new briefing schedule,(2) the recall of mandates of Nos.89-5320/5496/5647 and submission to the Court of

motions for rehearing in each appeal, and(3) re-submission to the court of her mandamus petition in Case No. 89-6514.

the Petitioner seeks by means of extraordinary writ review of the rulings properly made in the course of the above appeals and original action. the determination by the Clerk's Office that the motions for rehearing in cases 5320/5496/5649 were untimely submitted was affirmed by the latter orders denying the Petitioners motion to recall the mandates in these actions. the mandamus petition in case 89-6514 was submitted in its entirety to a panel of the Court. the determination that separate filing fee due in 89-6414 and 90-5015 was based upon conclusion that the Petitioner's appeals were separate and not merely successive appeals from the same order. We perceive no basis to question and petitioner paid fees. the request for extraordinary writ is denied.

ENTERED BY ORDER OF THE COURT Signed Leonard Green Clerk.

No. 90-¹²-8508
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RE: EARLENE POLYAK

filed Jul 27 1990

Petitioner

BEFORE: GUY BOGGS Circuit Judges; COHN, united
States District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members, but to all other active judges and no other judge of this Court having requested a vote on the suggested rehearing en banc, the petition for rehearing has been referred to original hearing panel.

The panel reviewed the petition and concludes that the issues raised were fully considered. Accordingly the petition is denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green, Clerk

- 13 -
No. 89-8510
UNITED STATES DISTRICT COURT

RE: EARLENE POLYAK

V

FILED APR 4 1989

WILLIAM BOSTON AND
BOSTON BATES & Holt

NOT RECMENDED FOR
PUBLICATION

BEFORE: MERRIT NELSON AND LIVELY

T a Petitioner in civil proceedings in district court has filed a petition for permission to appeal wherein she complains the district court's scheduling of pretrial conferences has been a financial and medical burden to her. She apparently wants this Court to instruct the district court to schedule the final pretrial conference and a trial on the same day in middle or late April 1989.

To the extent the petitioner seeks a writ of mandamus directing the district court to schedule pretrial conference and trial at a time satisfactory to the petitioner, we deny relief.

ENTERED BY ORDER OF THE Court

Signed Leonard Green

UNITED STATES COURT OF APPEALS

RE:EARLENER POLYAK

FILED JUN 13 1990

V

WILLIAM BOSTON AND

BOSTON BATES & HOLT

This pro se plaintiff appeals the district court's denial of her motion to rescue and the dismissal of her negligence action filed pursuant to 28 U.S.C. 1332(sic 28 USC 144)

This Court certifies that the transcript of the pretrial conference is needed to determine the grounds for the courts denial of the motion to rescue and the dismissal of action. It is further certified solely for 28 U.S.C. 753(f) that the appeal is not frivolous.

The court reporter at Nashville Tennessee is directed to prepare the transcript for the pretrial conference conducted before Judge Higgins on September 15, 1989 in 89-0036

Signed Leonard Green

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

RE: EARLENE POLYAK .

FILED MAY 11 1990

EARLENE POLYAK

NO.1:85-0125

V

COURT OF APPEALS
No. 90-5035

THOMAS STACK ET AL,

ORDER

Plaintiff has filed a Motion for Reconsideration of Denial to Amend Order and Return Check. For some reason, plaintiff believes that ~~it~~ is important that the Clerk's Office imparted inaccurate information to her about the filing fee to the United States Supreme Court.

For the Court to determine whether the Clerk's Office gave plaintiff inaccurate information, it would be necessary to take evidence that is not in the court record. The Court is unable to fathom why such a determination would be relevant. In her latest motion, plaintiff seems to suggest that this information would be advantageous(~~si~~ disadvantage) in affecting the dismissal of her appeal~~to~~ the Court of Appeals.

However, pursuant to plaintiff's motion to voluntarily dismiss(sic withdraw)the Court of Appeals has already dismissed plaintiff's appeal and returned file to the court.

The filing fee of \$05.00 has been returned to plaintiffpursuant to this Court's order on March 27, 1990. The docket sheet reflects the Clerk sent the notice of appeal and amended notice of appeal to the United States Supreme Court

It appears to the court that all procedural ACTIONS HAVE TAKEN PLACE. Plaintiff's motion to reconsider March 27, 1990 is denied

Signed Thomas A. Higgins

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED 6-22-88

V

No. 1:85-0125

JUDGE HIGGINS

THOMAS ATACK AND
HENRY HENRY & STACK

ORDER

The Court is receipt of an Affidavit
dated june 16, 1988, from Ms. Mary Mitchell.

The Clerk is directed to file this
affidavit as a part of the record.

It is so ORDERED.

Signed Thomas A Higgins
United States District
Judge

- 16 -
AFFIDAVIT

To whom it may concern:

My name is Mary Mitchell. I live at R#3,
Box 63B, Lawrenceburg, Tennessee 38464.

On or about September thru Nov. 1987, I was reading my newspaper, the Lawrence County Advocate, when a familiar name caught my eye. The name of the person was Earlene Polyak. Realizing I had met her on three occasions in the past, I read more, out of curiosity. The contents of the article revealed the intent to sale of some property that sounded familiar to me. In some correspondence in which I last received from Earlene Polyak some years ago. She had revealed to me that she owned a mobile home situated on some property herein Lawrence County, Tennessee. Upon meeting her again some six months after I read the article, I casually mentioned it to her, at this time she informed that she knew nothing of this. This is all the knowledge I have of this situation.

Signed Mary Mitchell

COUNTY OF LAWRENCE
STATE OF TENNESSEE

Sworn and subscribed before me this
18th day of June, 1988.

My commission expires: 8/18/88

Signed Mabel Evelyn Hedgepath

Notary Public.

Entered U.S. DIST COURT 6/22/88

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UNITED STATES COURT OF APPEALS
MIDDLE DISTRICT OF TENNESSEE

FRANK HULEN AND

FILED 9-26-89

v

GENERAL DOCKET NO.

1-89-X-12

EARLENE POLYAK

JUDGE HIGGINS

ORDER

In accordance with the memorandum contemporaneously entered, the Clerk is directed not to file the complaint submitted by Earlene Polyak as a regular case. The Clerk is further directed to assign a General Docket case number to the complaint and to return the \$120.00 filing fee to Mrs. Polyak.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

FILED 9-26-89

V

GENERAL DOCKET NO.
1-89-X-12

EARLENE POLYAK

JUDGE HIGGINS

MEMORANDUM

The court is in receipt of a document entitled Complaint and Jury Demand to Re-instate or Reopen Case and Add Parties, received on September 14, 1989, along with appropriate copies, civil cover sheet, and a check for \$120.00. by submitting the filing fee of \$120.00 and a civil cover sheet, it is apparent that plaintiff intends to file a new action.

By submitting this latest document, Mrs Polyak is again attempting to refile what has already been adjudicated in this Court. In Frank Hulen et al, v Earlene Polyak 1 89-X-06 Mrs Polyak attempts to relitigate the same issues raised in Frank Hulen et al v Earlene Polyak 1:75-0075 (Earlene Polyak v Frank Hulen

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

Plaintiff

v

FRANK HULEN AND
WILMA LESNANSKY

FILED SEPT 25 1989

TO CHIEF JUDGE

DEMAND JURY TRIAL

No. 1:87-0075

(1:84-0082 & 1:84-0083

(Not filed as a regular
case 1-89-X-12).

Order denied APPLICATION FOR WRIT OF
10-3-89 HABEAS CORPUS TO BRING
judge ~~Higgins~~ BEFORE THIS COURT

Applicant applies for writ of habeas
corpus to bring complaint and counter-claim
for relief in damages in UNCONSTITUTIONAL SALE
OF PROPERTY before this Court for jury trial,
submitted on September 8, 1989.

Although Clerk denied receiving this
complaint and jury demand to reinstate case.
This case was included in the same Express
package with motion a continuance. Applicant
for Case No. 1:84-0082 Frank Hulen and Wilma
Lesnansky v Earlene Polyak , and 1:84-0083
Earlene Polyak v Frank Hulen and Wilma Lesn-
ansky be brought before this Court 1:87-0075.

Applicant contends that the sale of her
properties in Lawrence County is unconsti-

tutional for "interest therein" on Robert Boston's invalid lein and this order of sale is being held without entering for appeal and right of redemption, against Tennessee Statute Partition in Kind 29-27-117, And this is the second time (fifth time) orders have been held without entering in (Courts) of Lawrence County.

On July 29, 1989, order held without entering three(3) months later on October 19, 1983. On December 26, 1984, order held without entering until eight (8) months later, on August 7, 1985, Judge Hamilton has tried to sell property on Nonsuits 10611 Earlene Polyak William boston boston Bates & Holt, and 10612 Earlene Polyak v thomas Stack Henry Henry & Stack, and this is the FOURTH time property scheduled for UNCONSTITUTIONAL SALE against State Statue 29-27-117.

On 25th day of September, 1989.

Signed Earlene Polyak(407)6273564
4063 Hood Rd. Palm Beach Gardens
Florida 33410

I certify that a true copy of this pleading has been mailed to Robert Boston, 2100 One Commerce Place, Nashville, Tennessee 37239.

Signed Earlene Polyak

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE
FOR FILMING

22



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK
Plaintiff

FILED OCT 13 1989

V

No. 1:86-0036

WILLIAM BOSTON AND
BOSTON BATES & HOLT

NO ORDER TO 11/14/89

Defendants

MOTION FOR VERIFICATION OF
FINDINGS OF FACTS
IN DENIAL OF REHEARING EN BANC

Plaintiff moves that the Court verify findings of facts in the Motion for Continuance of Pretrial Conference on September 15, 1989.

1. That order dismissing case does not give reasons for dismissing motion for transfer of case 1:86-0036 filed in the United States District Court, Southern District of Florida, West Palm Beach Florida on September 14, 1989, and filed in the United States District Court, Middle district of Tennessee September 14, 1989. Petition for Rehearing En Banc denied September 25, 1989.

2. That motion to transfer case pursuant

to 28 U.S.C. 1404(a) was filed in this Court (in motion for continuance) on September 14, thirty-three (33) days prior to alleged jury trial date on October 16, 1989. That this trial date continued on Robert Boston's motion for a continuance (within five days of receiving) on August 8, 1989.

3. That Plaintiff's Reply to Rescheduling Jury trial submitted on August 24, 1989, was filed on August 25, 1989 included motion continu

4. That order dismissing case 1:86-0036 did not contain reasons for dismissal at second (2nd) pretrial conference on September 15, 1989

5. That motion to rescue filed on August 3 1989 (28 U.S.C. 144) and order of dismissal does not contain reasons.

6. That motion for disqualification in 1: 86-0036 and 1:85-0125 Earlene Polyak v Thomas Stack and Henry Henry & Stack was denied on September 24, 1987 on Case No. 1:87-0075 Frank Hulen and Wilma Lesnansky v Earlene Polyak, and motion for reconsideration pending before this

Court on October 11, -²⁵- 1989, belongs to 1:870075

7. That Plaintiff was present in U.S. District Court in Nashville, Tennessee on May 31, 1988. (Partial hearing 1:85-0125 dismissed).

8. That Plaintiff was peesent in U.S. District Court in Nashville, Tennessee on June 20, 1988. (No trial (pro se excluded pre trial)).

9. That Plaintiff notified Court in Motion for continuance and transfer case by Express Mail received on September 13, 1989, And FAX LETTER at 8:34 a.m. on September 15, 1989. (She was unable to be in Court).

10. That motion for continuance (Second) pretrial conference and transfer of case was not acted upon by this Court except in denial of petition for rehearing motion for a continuance and transfer case en on September 25, 1989

12. That Plaintiff supported motion for a continuance pretrial conference and transfer case with medical statements. she has been hospitalized two times(for times) since September 15, 1989.

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On the 11th day of October, 1989.

Signed Respectfully submitted,
Earlene Polyak
4063 Hood Road
Palm Beach Gardens
Florida 33410

Certificate of Service

I certify that a true copy of this pleading has been mailed to Robert Boston, 2100 One Commerce Place, Nashville, Tennessee 37203

Signed Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

RE: EARLENE POLYAK

FILED MAY 24 1990

EARLENE POLYAK

TO CHIEF JUDGE

V

THOMAS A WISEMAN

No. 1:85-0125

THOMAS STACK AND

HENRY HENRY & sATAACK

AGGRIEVED MOTION TO CHIEF JUDGE

Plaintiff is aggrieved by clerical mistake in the order issued on May 11, 1990, misrepresenting Motion to Correct Clerical Error with withdraw and return timely Appeal to the Supreme Court of the United States from the United States District Court, and Emergency Motion to Judge Pierce Lively submitted to the United States Court of appeals pursuant to Rule 60.01 FRcivP, and Rule 60.02(b) FRcivP. This recent misrepresentation by Clerk's Office was received in florida May 18, 1990, and this aggrieved motion to Chief Judge is timely within ten days thereof. Plaintiff Moves to correct mistake.

Petirioners motion to withdraw has been

misrepresented Pursuant to Plaintiff's motion to dismiss (order 5/11/90) in which Petitioner effort to correct District court clerical error in court of appeals is advantage to ADVERSE PARTY(See. Coll Ex,).

On the 21 st day of May 1990.

Earlene Polyak(407) 6273564
4063 Hood road,
Palm beach Gardens
Florida 33410

Certificate of service

I certify that a true copy of this pleading has been mailed to Samuel Warner Henry Henry & Stack 119 first St. Pulaski, Tennessee 38478.

Earlene Polyak

Order-

Judge Wiseman the Chief Judge of this District, has previously removed himself in all of Plaintiff's proceedings. this action is assigned to the undersigned.

THE MOTION IS DENIED.

Signed Thomas A. Higgins.

5-31-90

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiff

FILED DEC 19 1983

v

No. 1974

EARLENE POLYAK
Defendant

JUDGMENT

This cause came on to be heard on this the 19 day of December 19, 1983, before the Honorable Jim T. Hamilton, Judge upon the motion this day filed by Defendant, personally on her own behalf, state and argument of the Defendant personally from all which the Court finds there to be no merit, and said motion is here and now overruled.

This 19th day of December, 1983.

Signed Jim T. Hamilton

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this pleading addressed to said counsel at his office .

Signed Charles Holt
Boston Bates & Holt

State case dismissed on above UNAPPEALABLE

JUDGMENT on April 24, 1984, NO FINAL ORDER.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

NO ENTRY DATE
Civil Action No. 1974

v

EARLENE POLYAK
Defendant

ORDER

Upon motion of Plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said Court having been affirmed through all stages of the Appellate process, it is hereby ordered as follows:

1. Col. Eulan Hooper is hereby authorized and directed to advertise, on behalf of the parties herein, the sale of land in Exhibit 1 hereto under the following terms and conditions of this order:

Mr. Hooper will advertise said sale in a newspaper of general circulation in Lawrence County Advocate said sale to be conducted at

public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and set out in the advertisements, and not to be less than 21 days following the entry of this order. Said advertisement shall be run in no less than three separate issues of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for cash, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Court on the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an

appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into the registry of this Court, the Clerk and Master shall divide the net proceeds equally among the parties hereto, after having paid Eulan Hooper a fee for his services in connection with said auction as ordered herein in the amount of 6% of the gross amount received at said auction, plus reimbursements for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of \$250.00, and shall pay from defendant's portion of the proceeds, all Court

costs incurred since this case initially
filed. Thereafter, the Clerk and Master shall
pay to parties hereto the net amount due each
party pursuant to the Court's partition,
subject, however, to payment by the Clerk and
Master all debts of all creditors of record of
any party who have a lein against any interest
in said land as a result of leins against
party's interest therein. Such leins of record
shall attach to the proceeds of the land the
same as same attached to the actual land.

4. All other matters are reserved
pending further of the Court.

So ordered this ____ day of September,
1987.

Hon. Jim T. Hamilton, Circuit

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN, ET AL
Plaintiffs

FILLED OCT 19 1983

v

CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge, Part II of the Circuit and Chancery Court in Lawrence County, Tennessee. While holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed, in this cause, the Answer thereto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the Court found in memo dated August 11, 1983, the following:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

